

EXHIBIT A

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
Sacramento Division

DAVID A. GILB; CALIFORNIA
DEPARTMENT OF PERSONNEL
ADMINISTRATION,

Petitioners/Plaintiffs,

vs.

JOHN CHIANG, sued herein in his official
capacity only; OFFICE OF STATE
CONTROLLER,

Respondents/Defendants.

CALIFORNIA CORRECTIONAL PEACE
OFFICERS' ASSOCIATION; CALIFORNIA
STATEWIDE LAW ENFORCEMENT
ASSOCIATION; STATIONARY ENGINEERS
LOCAL 39 INTERNATIONAL UNION OF
OPERATING ENGINEERS, AFL-CIO;
CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS;
PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT; YVONNE
WALKER and SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1000;
CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES, AND
HEARING OFFICERS IN STATE
EMPLOYMENT (CASE),

Intervenor Respondents/Defendants.

Case No. 2:08-cv-1960

**ANSWER TO PETITION FOR WRIT
OF MANDATE & COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

1 Respondents/Defendants JOHN CHIANG and the OFFICE OF STATE CONTROLLER
2 (hereinafter "Respondents"), answer the Petition for Writ of Mandate and Complaint for
3 Injunctive and Declaratory Relief filed by Petitioners DAVID A. GILB and the CALIFORNIA
4 DEPARTMENT OF PERSONNEL ADMINISTRATION ("DPA") as follows:

5 RESPONSES TO GENERAL ALLEGATIONS: PARTIES

6 1. Answering paragraph 1, Respondents admit the first sentence of that paragraph.
7 Respondents affirmatively allege that the duties prescribed to DAVID A. GILB are as stated in
8 Government Code section 19815.4. Except as admitted and/or affirmatively alleged,
9 Respondents deny each and every allegation contained in that paragraph.

10 2. Answering paragraphs 2, 3, 4, and 5, Respondents admit the allegations
11 contained in those paragraphs.

12 3. Answering paragraph 6, Respondents admit that the Respondent/Defendant
13 OFFICE OF THE STATE CONTROLLER is a state department. Respondents affirmatively
14 allege that Government Code sections 12410 and 12412 speak for themselves as duly enacted
15 provisions of law and are not in any way limitations on Respondents' authority. Except as
16 admitted and/or affirmatively alleged, Respondents deny each and every allegation contained in
17 paragraph 6.

18 RESPONSES TO VENUE

19 4. Answering paragraphs 7 and 8, Respondents admit the allegations contained in
20 those paragraphs.

21 RESPONSE TO FACTS APPLICABLE TO ALL CAUSES OF ACTION

22 5. Answering paragraph 9, Respondents affirmatively allege that Article IV, section
23 12 of the California Constitution speaks for itself as a duly enacted provision of law. Further,
24 answering paragraph 9, Respondents affirmatively allege that *White v. Davis* (2003) 30 Cal.4th
25 528, speaks for itself as a duly issued opinion of the California Supreme Court. Except as
26 affirmatively alleged, Respondents deny each and every allegation contained in paragraph 9.

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1 6. Answering paragraph 10, Respondents admit that the Legislature has failed to
2 meet the Constitutional deadline to pass a budget. Except as expressly admitted, Respondents
3 deny each and every other allegation contained in paragraph 10.

4 7. Answering paragraphs 11, 12, and 13, Respondents admit the allegations
5 contained in those paragraphs.

6 8. Answering paragraph 14, Respondents admit the first sentence of that paragraph.
7 Except as admitted, Respondents deny each and every other allegation contained in paragraph
8 14.

9 9. Answering paragraph 15, Respondents lack sufficient information or belief to
10 answer the allegations in paragraph 15, and, on that basis, deny each and every allegation
11 contained in that paragraph.

12 10. Answering paragraphs 16 and 17, Respondents deny each and every allegation
13 contained in those paragraphs.

14 11. Answering paragraphs 18, 19, 20, 21, 22, 23, 24, and 25, Respondents
15 affirmatively allege that *White v. Davis* (2003) 30 Cal.4th 528, speaks for itself as a duly issued
16 opinion of the California Supreme Court. Except as affirmatively alleged, Respondents deny
17 each and every allegation contained in paragraphs 18, 19, 20, 21, 22, 23, 24, and 25.

18 12. Answering paragraphs 26, 27, and 28, Respondents deny each and every
19 allegation contained in those paragraphs.

20 13. Answering paragraphs 29, 30, 31, 32, and 33, Respondents admit that the
21 Executive Order speaks for itself. Except as expressly admitted, Respondents deny each and
22 every other allegation contained in paragraphs 29, 30, 31, 32, and 33.

23 14. Answering paragraph 34, Respondents admit that the letter to the Governor from
24 the Controller dated July 31, 2008, speaks for itself. Except as expressly omitted, Respondents
25 deny each and every allegation contained in paragraph 34.

26 15. Answering paragraph 35, Respondents admit the allegations contained in that
27 paragraph.

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1 16. Answering paragraph 36, Respondents admit that a "pay letter" is a document
2 issued by DPA. Except as expressly admitted, Respondents deny each and every other
3 allegation contained in paragraph 36.

4 17. Answering paragraph 37, Respondents admit that on August 5, 2008, DPA
5 issued Pay Letter 08-23. Except as expressly admitted, Respondents deny each and every other
6 allegation contained in paragraph 37.

7 18. Answering paragraph 38, Respondents affirmatively allege that *White v. Davis*
8 (2003) 30 Cal.4th 528, speaks for itself as a duly issued opinion of the California Supreme
9 Court. Except as affirmatively alleged, Respondents deny each and every allegation contained
10 in paragraph 38.

11 19. Answering paragraphs 39, 40, and 41, Respondents affirmatively allege that the
12 DPA Pay Letter 08-23 speaks for itself. Except as affirmatively alleged, Respondents deny
13 each and every allegation contained in those paragraphs.

14 20. Answering paragraph 42, Respondents admit the allegations contained in that
15 paragraph.

16 21. Answering paragraph 43, Respondents affirmatively allege that *White v. Davis*
17 (2003) 30 Cal.4th 528, speaks for itself as a duly issued opinion of the California Supreme
18 Court. Except as affirmatively alleged, Respondents deny each and every allegation contained
19 in paragraph 43.

20 22. Answering paragraph 44, Respondents admit the allegations contained in that
21 paragraph.

22 23. Answering paragraph 45, Respondents admit receipt of DPA's August 8, 2008,
23 memorandum. Respondents affirmatively allege that the August 8, 2008, DPA memo speaks
24 for itself. Except as admitted or affirmatively alleged, Respondents deny each and every
25 allegation contained in paragraph 45.

26 24. Answering paragraph 46, Respondents admit the allegations contained in that
27 paragraph.

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1 25. Answering paragraphs 47 and 48, Respondents deny each and every allegation
2 contained in those paragraphs.

3 26. Answering paragraph 49, Respondents affirmatively allege that *White v. Davis*
4 (2003) 30 Cal.4th 528, speaks for itself as a duly issued opinion of the California Supreme
5 Court. Except as affirmatively alleged, Respondents deny each and every allegation contained
6 in paragraph 49.

7 27. Answering paragraph 50, Respondents admit the first sentence of that paragraph.
8 In further answer to paragraph 50, Respondents affirmatively allege that *White v. Davis* (2003)
9 30 Cal.4th 528, speaks for itself as a duly issued opinion of the California Supreme Court.
10 Except as affirmatively alleged, Respondents deny each and every allegation contained in
11 paragraph 50.

12 28. Answering paragraph 51, Respondents admit the allegations contained in that
13 paragraph.

14 RESPONSE TO FIRST CAUSE OF ACTION

15 (WRIT OF MANDATE C.C.P. SECTION 1085)

16 29. Answering paragraph 52, Respondents hereby fully incorporate by reference all
17 of the foregoing paragraphs as though fully set forth herein.

18 30. Answering paragraph 53, Respondents admit that Code of Civil Procedure
19 section 1085, speaks for itself as a duly enacted provision of law. Except as affirmatively
20 alleged, Respondents deny each and every allegation contained in paragraph 26.

21 31. Answering paragraph 54, Respondents admit the allegations contained in that
22 paragraph.

23 32. Answering paragraph 55, Respondents deny each and every allegation contained
24 in that paragraph.

25 33. Answering paragraph 56, Respondents affirmatively allege that *White v. Davis*
26 (2003) 30 Cal.4th 528, speaks for itself as a duly issued opinion of the California Supreme
27 Court. Except as affirmatively alleged, Respondents deny each and every allegation contained
28 in paragraph 56.

1 34. Answering paragraphs 57 and 58, Respondents deny each and every allegation
2 contained in those paragraphs.

3 35. Answering paragraph 59, Respondents affirmatively allege that *White v. Davis*
4 (2003) 30 Cal.4th 528, speaks for itself as a duly issued opinion of the California Supreme
5 Court. Except as affirmatively alleged, Respondents deny each and every allegation contained
6 in paragraph 59.

7 RESPONSE TO SECOND CAUSE OF ACTION
8 (COMPLAINT FOR INJUNCTIVE RELIEF C.C.P SECTION 526)

9 36. Answering paragraph 60, Respondents hereby fully incorporate by reference all
10 of the foregoing paragraphs as though fully set forth herein.

11 37. Answering paragraph 61, Respondents admit that the Controller intends to
12 continue to pay state employees their full regular salaries for the August pay period. Except as
13 expressly admitted, Respondents deny each and every other allegation contained in paragraph
14 61.

15 38. Answering paragraph 62, Respondents deny each and every allegation contained
16 in that paragraph.

17 39. Answering paragraph 63, Respondents admit the allegation contained in that
18 paragraph.

19 40. Answering paragraphs 64, 65, and 66, Respondents deny each and every
20 allegation contained in those paragraphs.

21 41. Answering paragraph 67, Respondents affirmatively allege that *White v. Davis*
22 (2003) 30 Cal.4th 528, speaks for itself as a duly issued opinion of the California Supreme
23 Court. Except as affirmatively alleged, Respondents deny each and every allegation contained
24 in paragraph 67.

25 42. Answering paragraphs 68, 69, and 70, Respondents deny each and every
26 allegation contained in those paragraphs.

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RESPONSE TO THIRD CAUSE OF ACTION

(COMPLAINT FOR DECLARATORY RELIEF C.C.P. SECTION 1060)

43. Answering paragraph 71, Respondents hereby fully incorporate by reference all of the foregoing paragraphs as though fully set forth herein.

44. Answering Paragraphs 72 and 73, Respondents admit the allegations contained in those paragraphs.

45. Answering paragraph 74, Respondents lack sufficient information or belief to answer the allegations in paragraph 74, and, on that basis, deny each and every allegation in that paragraph.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As a first, separate and distinct affirmative defense, Respondents allege that the Petition and each cause of action therein fail to allege sufficient facts to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

As a second, separate and distinct affirmative defense, Respondents allege that they exercised their authority and discretion and, based upon the facts and the law, did not abuse it or otherwise violate the law.

THIRD AFFIRMATIVE DEFENSE

As a third, separate and distinct affirmative defense, Respondents allege that Petitioners have no beneficial right to the performance sought through the Petition and therefore has no standing to file the Petition.

FOURTH AFFIRMATIVE DEFENSE

As a fourth, separate and distinct affirmative defense, Respondents allege that the state will have sufficient cash to meet its financial obligations, including debt service, during the budgetary impasse.

The Controller is tasked, among his other powers, with the state accounting (Government Code section 12412) and cash management (Government Code section 1246.1, Provision 9 of item 0840-001-0001, of the 2007-08 Budget Act, Declaration of Susan Griffith.)

1 As of the end of July 2008, the State of California's General Fund cash position,
2 comparing actual receipts and disbursements for the 2008-09 fiscal year to cash flow estimates
3 prepared by the Department of Finance for the 2008-09 May Revision, indicated the state had
4 \$10.1 billion remaining in unused borrowable resources (internal borrowing on a short-term
5 basis from specific funds to the General Fund), more than twice what was estimated in the
6 Governor's May Revision. In addition, the state's disbursements were \$306 million lower (-
7 3.3%) than estimated in the Governor's May Revision. (Declaration of Susan Griffith and
8 attached Exhibit A.)

9 Furthermore, in 19 of the last 20 years, the state has used external borrowing, borrowing
10 from sources other than from state special funds, as a cash manage tool to smooth out the
11 revenue flow. External borrowing is a common cash management tool, which has included both
12 Revenue Anticipation Notes (or RANs) and Revenue Anticipation Warrants (or RAWs).
13 (Declaration of Susan Griffith.)

14 In addition, only fifty-one percent (51%) of state employees are paid from the General
15 Fund. The other forty-nine percent (49%) of state employees are paid from various Special
16 Funds, some of which have continuing appropriations. (Declaration of Susan Griffith.)

17 **FIFTH AFFIRMATIVE DEFENSE**

18 As a fifth, separate and distinct affirmative defense, Respondents allege that the
19 Governor, and/or Petitioners are not authorized, by executive order, to direct the Respondents in
20 the manner in which the Respondents exercise their constitutional and statutory authority over
21 the drawing of warrants from the State Treasury.

22 WHEREFORE, Respondents request the following:

- 23 1. That judgment be rendered in favor of Respondents and against Petitioners;
24 2. That Petitioners take nothing by the Complaint, which must be dismissed with
25 prejudice;
26 3. That Respondents be awarded costs of suit incurred;
27 4. That the Court grant other and further relief as the Court may deem just and
28 proper.

1 Respectfully submitted,

2 Dated: September 10, 2008

OFFICE OF THE STATE CONTROLLER

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4 By: Shawn D. Silva
5 SHAWN D. SILVA, Staff Counsel
6 Attorney for Respondents/Defendants
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